

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DALLAS COUNTY SCHOOLS, TEXAS)	File Nos. 0003823315, 0003823334
)	
Request for Waiver of Sections 20.9(a)(6), 22.377,)	
22.621, and 22.623(b) of the Commission's Rules)	

ORDER

Adopted: June 20, 2011**Released: June 21, 2011**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Dallas County Schools, Texas (DCS) filed two applications and an associated Waiver Request¹ for authority to use, for public safety purposes, 18 frequencies allocated under Part 22 of the Commission's rules.² Specifically, DCS seeks to license 18 frequencies "to expand overall capacity to accommodate its total communications needs."³ DCS seeks waiver of Sections 20.9(a)(6), 22.377, 22.621, and 22.623(b) of the Commission's rules⁴ to use these frequencies pursuant to Section 1.925 of the Communication's rules.⁵ By this Order, we grant the Waiver Request as discussed herein.

II. BACKGROUND

2. DCS states that it "is a county school district responsible for the health and safety of over 425,000 students and a team of over 1,700 professionals."⁶ In addition, DCS states that it "has one of the five largest pupil transportation fleets in the United States, with over 1,400 buses" and "transports

¹ See File Nos. 0003823315 and 0003823334 (filed April 30, 2009, amended October 6, 2009) and 0003823334 (filed April 30, 2009, amended October 6, 2009, May 21, 2010 and March 2, 2011) and attached Request for Waiver of Sections 22.7, 22.501, 22.621, 90.305(b), 90.311, and 90.313(c) of the FCC Rules and Regulations Under Section 337(c) of the Communications Act of 1934, as Amended (Waiver Request).

² 47 C.F.R. Part 22.

³ Waiver Request at 2.

⁴ 47 C.F.R. §§ 20.9(a)(6), 22.377, 22.621, 22.623(b), 90.311, 90.313(c). See Waiver Request at 1. See also File Numbers 0003823315 and 0003823334, attached Response to E-mail Request for Additional Information; Request for Waiver of Additional Rule Sections, filed October 6, 2009 (Oct. 2009 Amendment) at 1, 3; and letter from Leatha Mullins, Chief Technology Officer, Dallas County Schools to Uche Patrick, Electronics Engineer, Public Safety and Homeland Security Bureau, Federal Communications Commission (dated February 15, 2011) (Mullins Letter) (removing Section 90.305 from the list of rules). DCS also had requested waiver of 47 C.F.R. §§ 22.7, 22.501, 90.311, and 90.313(c). See Waiver Request at 1. DCS does not need a waiver of Sections 22.7 (eligibility) and 22.501 (scope); and the two rules in Part 90 do not apply to frequencies under Part 22.

⁵ 47 C.F.R. § 1.925; Waiver Request at 4. See also Oct. 2009 Amendment at 1.

⁶ Waiver Request at 1.

approximately 60,000 students to and from school.”⁷ DCS asserts that it “also provides a vital asset to the Dallas County Office of Security and Emergency Management and the State Governor’s Office.”⁸ DCS states that “it functions in a first responder capacity for city, regional, and statewide events to assist in emergency evacuation efforts.”⁹ Furthermore, “DCS has also been active in development of a mobile interoperable communications trailer that can provide connectivity through internet access, phone access (both analog and IP-based), and UHF two-way land mobile facilities.”¹⁰ DCS asserts that “[t]he trailer will permit multiple agencies to have interoperable communications when other facilities are overloaded or destroyed due to disasters or terrorist events” and “has become a key and vital player in homeland security efforts both in the Dallas area and in Texas.”¹¹

3. DCS states that it “currently holds two licenses, WPUW404 and WQBQ662, both for UHF channels in the Industrial/Business pool.”¹² DCS argues that “[a]ll of the eight repeater channels licensed under WPUW404 are shared with numerous other business/industrial users in the Dallas area,” and that “[t]his is also true of the mobile-only channel authorized under WQBQ662” therefore “[a]ll of the channels are subject to interference.”¹³ DCS states that “[r]eliable communications are essential to DCS being able to perform its mandates” and “[i]nterference and channel blocking are putting the public, and first responders in jeopardy.”¹⁴ Hence, “DCS desires to improve the quality of radio communications circuits that are available and to expand overall capacity to accommodate its total communications needs.”¹⁵ DCS concludes that “[t]he new system will provide both needed coverage and interoperability between DCS and other public safety agencies.”¹⁶

4. DCS states that it “has begun a review of how it will accomplish both its educational and homeland security responsibilities in the future” since “the current communications system is woefully inadequate.”¹⁷ To support its request, DCS conducted “[a] review of the UHF spectrum in and around Dallas” and the review “revealed that existing UHF land mobile spectrum that can be licensed under Part 90 is already heavily congested, whether in the business/industrial or public safety pools” and “[t]his led DCS to consider T-Band channels.”¹⁸ DCS argues that “[e]ven if channels are available at other public

⁷ *Id.* See File Nos. 0003823315 and 0003823334, attached Dallas County Schools Public Safety and Homeland Security Activities (DCS PSHS Activities) at 3.

⁸ Waiver Request at 1.

⁹ *Id.* at 1-2. See also File Nos. 0003823315 and 0003823334, attached Letter from Mr. Ray Lanoux, Director of Risk Management/Facility Management to Dallas County Schools (filed on April 30, 2009).

¹⁰ Waiver Request at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

safety bands, [that] the applicant would have to buy all new equipment, as its current equipment operates at UHF” and this “would be prohibitively expensive.”¹⁹

5. DCS notes that “Television channel 16 is allocated for land mobile use within 80 kilometers of Dallas (482-488 MHz) under Section 90.303(b) of the FCC Rules and Regulations” and “only frequencies between 482/485.30625 and 484/487.99375 MHz are permitted under Section 90.311.”²⁰ The frequency coordinator for DCS reports that “there are no UHF Frequencies available that will meet the needs of the applicant.”²¹ As an alternative, DCS states that “[f]requencies between 482/485.00000 and 482/485.30000 MHz are reserved for common carrier use under Section 22.621 of the Rules.”²² DCS states that “[i]n reviewing licensing data for the Part 22 allocation in the Dallas area” it “learned that only a very few of the available channels are licensed.”²³ Therefore, DCS seeks to use “18 channels of 12.5 kHz bandwidth that could be licensed with no other co-channel users and no overlapping bandwidth with any incumbent common carrier licensee.”²⁴

6. On January 8, 2010, the Public Safety and Homeland Security Bureau (Bureau) placed DCS’s waiver request and associated applications on public notice.²⁵ The Bureau sought “comment on whether the 700 MHz public safety band would provide a viable alternative, particularly since the digital transition date has passed and in the light of the Commission’s actions to facilitate a 700 MHz nationwide, interoperable broadband public safety network.”²⁶ In addition, the Bureau also sought comment on whether DCS would “be able to complete its proposed construction and improve interoperability by using frequencies in the 700 MHz public safety band, rather than using the television T band frequencies.”²⁷ No comments addressing the merits of the application and waiver request were filed in response to the *Public Notice*.

7. As an aside, we note that DCS previously had requested a waiver of Section 90.305(b) of the Commission’s rules, which requires that mobile units shall be operated within 48 kilometers (30 miles) of their associated base stations.²⁸ Specifically, DCS had requested that the Commission “grant statewide mobile operations on secondary basis subject to the applicant causing no interference to

¹⁹ Oct. 2009 Amendment at 1.

²⁰ Waiver Request at 3.

²¹ See File Nos. 0003823315 and 0003823334, attached letter from Wendy Caruthers, Engineering Coordination Specialist, APCO International, Inc., to FCC (dated April 21, 2009).

²² Waiver Request at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by Dallas County Schools, Texas to Operate a New Public Safety Communications System Using Part 22 Frequencies in the Television Channel 16 (482-488 MHz) Band, *Public Notice*, 25 FCC Rcd 153 (PSHSB 2010) (*Public Notice*).

²⁶ *Id.* at 3, citing Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

²⁷ *Public Notice* at 3-4.

²⁸ 47 C.F.R. § 90.305(b).

television stations.”²⁹ DCS had requested waiver of this rule because DCS “functions in a first responder capacity for city, regional, and statewide events to assist in emergency evacuation efforts” and needs to protect “the health and safety of over 425, 000 students and a team of over 1,700 professionals.”³⁰ However, after discussion with Commission staff regarding a waiver of this rule, DCS requested “the removal of the waiver portion that refers to Section 90.305.”³¹ Specifically, DCS states that “[t]he [proposed] system would operate only within the 48 kilometer radius of 901 Main St. as rated on the license applications” as the license is “to be granted for Dallas area use only.”³² Accordingly, DCS’s waiver request as amended is limited to Sections 20.9(a)(6), 22.377, 22.621, and 22.623(b).³³

III. DISCUSSION

8. Section 1.925 of the Commission’s rules provides that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: “(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest;³⁴ or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”³⁵ Applicants seeking a waiver face a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.³⁶ We evaluate the waiver request using the first prong of Section 1.925 below. We proceed with analyses of each rule for which DCS requests waiver.

9. *Section 22.621.* The underlying purpose of Section 22.621 is to reserve certain frequencies “for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service.”³⁷ DCS asserts that “[t]here are no co-channel 12.5 kHz offset PLMR or common carrier stations licensed for any of the proposed channels.”³⁸ Our review of the ULS licensing database confirms DCS’s assertion. We find that no Part 22 common carrier operations

²⁹ Oct. 2009 Amendment at 3.

³⁰ Waiver Request at 1.

³¹ See Mullins Letter.

³² *Id.* at 1.

³³ See 47 C.F.R. §§ 20.9(a)(6), 22.377, 22.621, and 22.623(b). Section 20.9(a)(6) provides that these frequencies shall be regulated as a commercial mobile radio service. Section 22.377 requires that all transmitters used in the Public Mobile Services, including in-building radiation systems and cellular repeaters, be certificated prior to operation. Section 22.621 sets forth frequencies, some of which are in the 470-512 MHz Band, that are available for point-to-multipoint systems. Section 22.623(b) allows channels listed in Section 22.621 to be assigned only individually (unpaired).

³⁴ 47 C.F.R. § 1.925(b)(3)(i).

³⁵ 47 C.F.R. § 1.925(b)(3)(ii).

³⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

³⁷ 47 C.F.R. § 22.621.

³⁸ Oct. 2009 Amendment at 2.

are licensed on the requested frequencies nor is an auction of the frequencies listed in Section 22.621 either imminent or pending.³⁹

10. As a matter of policy, the Commission would typically assign a point-to-multipoint channel listed under Section 22.621 to a Part 22 applicant if that channel was previously unoccupied in that urban area.⁴⁰ However, in the instant case, we find that the public interest would be better served by enabling DCS to use the frequencies for public safety purposes rather than to let the requested frequencies remain unassigned.⁴¹ Accordingly, we conclude that the underlying purpose of Section 22.621 would not be served or would be frustrated by application to the present case. As an ancillary matter, our database search also verified that there are no incumbent private land mobile radio (PLMR) licensees on the same frequencies and adjacent frequencies in need of consideration.

11. *Protection of Co-Channel and Adjacent Channel TV Licensees.* We now analyze the impact of the DCS's proposed operation on co-channel and adjacent channel TV licensees. DCS states that the co-channel "closest full service licensed station is KHCE-DT in San Antonio, Texas" and "closest of the proposed sites is Pat Raney which is 394.1 km away."⁴² DCS asserts that "[t]here is also a pending Construction Permit for KSAN-DT in San Angelo, Texas" and "closest proposed station is Irving at 351.3 km."⁴³ In addition, DCS states that "there are no [co-channel] television stations that need be considered for the Dallas area."⁴⁴ According to Section 22.627 (Table E-5), the minimum required distance from a base station to a TV station is 193 miles.⁴⁵ Therefore, since the distances Stations KHCE-DT and KSAN-DT from the proposed base stations are greater than the minimum required distance,⁴⁶ we conclude that DCS's proposed operations would neither cause harmful interference to, nor experience harmful interference from co-channel TV stations.

12. We also find that DCS's proposed operations will not cause harmful interference to adjacent channel TV licensees. For the lower adjacent Channel 15, DCS states that "[t]he closest full service licensed station is KJTL-DT in Wichita Falls, Texas" and "closest of the proposed sites is Coppel which is 213.1 km away"⁴⁷ and for upper adjacent channel 17, "[t]he closest licensed station is K17BP in

³⁹ The Commission's Wireless Telecommunications Bureau has not announced an auction for Section 22.621 frequencies, unlike other Part 22 spectrum.

⁴⁰ See County of Morris, New Jersey, *Order*, 24 FCC Rcd 12492, 12496-97 ¶ 13 n.51 (PSHSB PD 2009).

⁴¹ See Gateway Telecom LLC, *Order*, 22 FCC Rcd 15789, 15795 ¶ 13 (2007) (finding that "no current licensee that would be negatively impacted by granting a waiver" and that "if a waiver is denied, . . . frequencies will be unassigned until the Commission makes the spectrum available through auctions or other means."). Cf. Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11001 ¶ 9 (WTB PSPWD 2000) (weighing the competing public interests and finding that waiver proponent did not demonstrate that the public interest in not allowing a channel temporarily be unassigned outweighed the public interest in fairness of application process). See also *infra* para. 13 (for our further consideration of public interest factors).

⁴² Oct. 2009 Amendment at 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 47 C.F.R. § 22.627.

⁴⁶ See Oct. 2009 Amendment at 2.

⁴⁷ *Id.*

Palestine, Texas” and “closest of the proposed sites is Kleberg which is 140.6 km away.”⁴⁸ DCS argues that the “station is technically not entitled to protection, as it is a low power station.”⁴⁹ DCS states that “[t]he closest full service station is KPCB-DT in Snyder, Texas” and “closest proposed station is Coppel at 365.9 km.”⁵⁰ DCS states that “there are no [adjacent] television stations that need be considered for the Dallas area.”⁵¹ According to Section 22.627 (Table E-7), the minimum required distance from a base station to a TV station is 97 kilometers.⁵² Because Stations KJTL-DT, KIZBP and KPCB-DT are each located from the proposed base stations at a distance greater than the minimum required distance separation specified in Section 22.627,⁵³ we conclude that DCS’s proposed operations would not cause harmful interference to adjacent channel TV stations.

13. *Public Interest.* Based upon the record, we find DCS has demonstrated that grant of the waiver would be in the public interest. Specifically, DCS has shown that grant of the waiver will provide it with access to additional UHF spectrum in order to promote effective public safety communications without compromising radio operations of other licensees. We find it significant that granting the instant applications and request will improve “its responsibilities for the safety of thousands of school children” and “provide both needed coverage and interoperability between DCS and other public safety agencies.”⁵⁴ DCS states that “[t]he requested licenses will allow DCS to build a modern communications system in further support of the safety of life and property.”⁵⁵ We therefore find that the proposed network furthers the public interest to grant DCS the use of the requested frequencies in the 482-488 MHz band to allow it to protect the lives and property in its care and enable it to replace an “inadequate UHF radio system, particularly given its responsibilities for the safety of thousands of school children” and its participation in the “public safety and homeland security activities.”⁵⁶

14. *Section 20.9(a)(6).* This rule presumes that the proposed frequencies will be treated as common carriage services and regulated as commercial mobile radio services.⁵⁷ According to DCS, “a waiver of Section 20.9(a)(6) is requested to allow private paging on the requested channels.”⁵⁸ This regulatory structure is not applicable to, or appropriate for, frequencies used for public safety purposes. Because we find that it is in the public interest to allow DCS to use the requested frequencies for public safety purposes, we conclude that the underlying purpose of Section 20.9(a)(6) would not be served by its application to the present case.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 47 C.F.R. § 22.627.

⁵³ See Oct. 2009 Amendment at 2.

⁵⁴ Waiver Request at 5-6.

⁵⁵ *Id.* at 7.

⁵⁶ *Id.* 5-6. DCS PSHS Activities at 1.

⁵⁷ See 47 C.F.R. § 20.9(a)(6).

⁵⁸ Oct. 2009 Amendment at 1.

15. *Section 22.377*. This rule requires that all transmitters used in the Public Mobile Services must be certified for use in the radio services regulated under Part 22.⁵⁹ DCS “plans to conduct PLMR operations, necessitating the use of equipment certified for use under Part 90 rather than Part 22” and “Part 22 equipment is generally not designed for push to talk operations, whereas, Part 90 equipment is primary designed for push-to-talk.”⁶⁰ DCS asserts that “[p]ush-to-talk capabilities are required in a dispatch environment such as envisioned by the applicant.”⁶¹ This regulation is not applicable to, or appropriate for, frequencies used for public safety purposes. We therefore conclude that a waiver of Section 22.377 is unnecessary in the present case.

16. *Section 22.623(b)*. This rule specifies system configuration requirements for paging control channels assigned pursuant to Part 22. These requirements include that the “channels may be assigned only individually (unpaired)” and that “[f]ixed relay transmitters are not authorized.”⁶² DCS requests a waiver of Rule Section 22.623(b) in order “to allow base/mobile channel pairing at 3 MHz separation to be consistent with the channel plan in Part 90 of the FCC rules and regulations.”⁶³ DCS would not operate in the public mobile service, and since public safety communications systems typically use frequencies in pairs for base and mobile operations, this rule is not applicable to, or appropriate for, frequencies used for public safety purposes. Because we find above that it is in the public interest to allow DCS to use Part 22 frequencies for public safety purposes, we conclude that the underlying purpose of Section 22.623(b) would not be served by its application to the present case.

17. Lastly, in concluding that granting waiver relief to DCS is consistent with the public interest, we also observe that the Commission has begun examining ways to repurpose TV bands, such as the 470-512 MHz band,⁶⁴ for flexible use, including commercial mobile broadband. For instance, the National Broadband Plan has recommended that the Commission consider freeing up spectrum for commercial broadband use by using such mechanisms as voluntary incentive auctions,⁶⁵ and the Commission has taken its first steps toward this possibility with allocation proposals that would accommodate such use.⁶⁶ While, at this time, we conclude that granting DCS waiver relief will not compromise the Commission’s ability to act (and flexibility in acting) on the recommendations of the National Broadband Plan and related initiatives for repurposing part of the TV bands for flexible use, we

⁵⁹ See 47 C.F.R. § 22.377.

⁶⁰ Oct. 2009 Amendment at 3.

⁶¹ *Id.*

⁶² See 47 C.F.R. § 22.623(b).

⁶³ Oct. 2009 Amendment at 1.

⁶⁴ The 470-512 MHz band segment in which DCS seeks to use Part 22 frequencies is one of five bands currently allocated principally to broadcast television under Part 73 of the rules. See 47 C.F.R. Part 73. Specifically, the 470-512 MHz band is allocated for fixed and land mobile services on a co-primary basis with broadcasting. See 47 C.F.R. § 2.106, footnote NG66.

⁶⁵ See FED. COMMUNICATIONS COMM’N, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 88-93 (2010).

⁶⁶ See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498 (2010) (proposing, *inter alia*, to expand allocations for primary operations in TV bands to include fixed and mobile services, as one of the “preliminary steps to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions we expect to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband.”).

note that our consideration of the public interest in analyzing waiver requests on a case-by-case basis requires that we carefully consider any action that would disrupt or hamper the Commission's ability to identify and maximize the use of available spectrum. As the Commission takes steps to further broadband spectrum initiatives, it is likely that additional waiver requests for public safety use of spectrum currently allocated for the TV broadcast service will have different and more significant effects on Commission plans for this spectrum, and that it will accordingly become much more difficult to conclude that such waivers would, on the whole, serve the public interest. We therefore strongly urge public safety entities contemplating future waivers for TV and other non-public safety spectrum to consider use of the 700 MHz band to promote such goals as nationwide interoperability, consistent with the public interest.

IV. CONCLUSION

18. Based on the foregoing, we conclude that DCS has made a sufficient showing for granting its requested waiver under Section 1.925 of the Commission's rules. We therefore grant DCS a waiver of Sections 20.9(a)(6), 22.621, and 22.623 to permit DCS to upgrade its public safety communications system and operate on the requested 18 Part 22 frequencies in the 470-512 MHz band.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver, as amended, associated with File Nos. 0003823315 and 0003823334 filed by Dallas County Schools, Texas IS GRANTED, to the extent indicated herein.

20. IT IS FURTHER ORDERED that File Nos. 0003823315 and 0003823334 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

21. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
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